XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.340/07 सन् 200

(20)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT — Chedu Chikva, S/o Dukharam Chikva, aged about 50 years, R/o Gopatu, Police Station Kusmi, District Sarguja (CG).

-Versus-

RESPONDENT — State of Madhya Pradesh (now Chhattisgarh), Through Thana In-Charge, Police Station Kusmi, District Sarguja (CG).

(Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench :

Hon'ble Mr. L.C. Bhadoo &
Hon'ble Mr. Sunil Kumar Sinha, JJ

20-8-2007

Shri H.P. Agrawal, counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State.

This is a jail appeal.

Heard on I.A.No.1, application for condonation of delay in filing the appeal.

As per the office report there is delay of 3258 days in filing this appeal. It has been mentioned in the letter sent by the accused that he gave certified copy of the judgment to his uncle namely, Barva for filing appeal, but on account of his illness, illiteracy and poverty, he could not file the appeal, therefore, he obtained the certified copy of the judgment again on 26-4-2007.

It is the small matter; therefore, by the consent of learned counsel for the parties, it was heard on admission also.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Having heard learned counsel for the parties on condonation of delay as well as on merit, we have perused the record of the trial Court.

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 31-3-1998 passed by the Sessions Judge, Sarguja (Ambikapur) in Sessions Trial No.145/1997, whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of his mother Jamain Bai and sentenced him to undergo imprisonment for life and to pay a fine of Rs.200/-, in default of payment of fine to further undergo S.I. for four months.

Case of the prosecution, in brief, is that Jamain Bai (since deceased) used to reside with her grandson Kasru Ram (PW-1). On the fateful day, she left the house of Kasru Ram in the early morning for going to the house of her son Chedu (accused/appellant herein). On the same day at about 1.30 p.m., Kasru Ram was participating in the meeting of Gram Sabha, at that time accused came there and informed him that Jamain Bai is lying on the way near Pokhra Phat in a pool of blood. Receiving this information Kasru Ram along with other villagers reached the spot and saw the dead body of his grandmother Jamain Bai. The body was drenched with blood. There was an injury on the neck. The matter was reported in the Police Station Kusmi at about 4.50 p.m. by him under merg intimation Ex.P/2. Based on that First Information Report (Ex.P/1) was registered.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur, who in turn committed the case to the Court of Sessions Judge, Sarguja (Ambikapur).

In order to establish the charge against the accused/appellant, the prosecution examined 6 witnesses. Statement of the accused was recorded

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. He stated that he is innocent and has been falsely implicated in the crime.

Learned Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

We have heard Shri H.P. Agrawal, learned counsel for the appellant and Shri Akhil Mishra, learned Panel Lawyer for the State.

The conviction rests on the testimony of PW-1 Kasru Ram, grandson of the deceased, to whom the accused came and informed about the death of Jamain Bai, and also the evidence of PW-3 Sundar Nagesiya, to whom Jamain Bai (deceased) made oral dying declaration as also the evidence of Investigating Officer, R.K. Mishra (PW-4), to whom the accused gave memorandum regarding the place where he kept the *Gandasa* and the blood stained clothes of the accused were seized by him.

Coming to the evidence of PW-3 Sundar Nagesiya, to whom the deceased made oral dying declaration has stated that on the fateful day he was returning from Goptu to his village. When he reached near Pokhra Phat, he saw that one elderly lady was sitting there. When he enquired from her as to how she has sustained injuries, she disclosed that her elder son Chedu has attacked her with a *Dabiya*. She requested him that he should be taken to her residence. In the meantime, she fell down and died. In the cross-examination of this witness, the defence has not been able to elicit any circumstance, which discredit the evidence of this witness. He is an independent witness and there is nothing on record to indicate that he has any animosity against the accused or he was interested in the deceased, so that he had any chance to implicate the accused in a false case.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Moreover, the above evidence regarding the oral dying declaration of this witness stands corroborated to the extent by the evidence of PW-1 Kasru Ram, who has stated that his grandmother (deceased Jamain Bai) used to reside with him, on the fateful day she left the house in the morning for going to the house of her elder son Chedu. On the way while returning, she was sitting in injured condition and she disclosed this fact to PW-3 Sunder Nagesiya that the accused/appellant attacked her with *Dabiya*. PW-1 has also stated that on the same day he was participating in the Gram Sabha, at that time, accused came and informed that his mother (Jamain Bai) and grandmother of Kasru Ram is lying on the way. Thereafter Kasru and other villagers went and saw the deceased. The conduct of the accused is unnatural. When he saw his mother in injured condition instead of taking her to hospital he left her, came and informed Kasru Ram, therefore, he gave false information to PW-1 Kasru Ram. Moreover, oral dying declaration is also corroborated regarding the involvement of the accused on the ground that the weapon of offence *Gandasa* was seized at the instance of the accused and the clothes of the accused were also found stained with blood.

In view of the evidence available on record, we do not find any illegality or infirmity in the judgment of the trial Court regarding the complicity of the accused in committing the murder of his own mother. There is delay of about 3258 days in filing the appeal and the reason given by the appellant is not satisfactory, therefore, the appeal is liable to be dismissed on the ground of delay as well as on merit and accordingly it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Gowri